

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES MICHAEL MCCLAIN,

Defendant-Appellant.

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UNPUBLISHED

January 23, 2007

No. 264098

Oakland Circuit Court

LC No. 2004-199764-FC

Before: Donofrio, P.J., and Bandstra and Zahra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of conspiracy to deliver or possession with intent to deliver 450 or more but less than 1,000 grams of cocaine, MCL 750.157a and MCL 333.7401(2)(a)(ii), and possession of marijuana, MCL 333.7403(2)(d).<sup>1</sup> He was sentenced as an habitual offender, fourth offense, MCL 769.12, to concurrent prison terms of 8 to 30 years for the conspiracy conviction, and time served (i.e., 238 days) for the possession of marijuana conviction. He appeals as of right, challenging the legality of a search of his premises. We affirm.

On March 15, 2004, several police officers went to 26 Sanford in the City of Pontiac to execute a search warrant that authorized the seizure of documentary evidence. After announcing their presence and receiving no response, they effectuated a forced entry. Once inside the house, officers noticed that the house was lit, a television was playing, and food was cooking on the stove, but no one was in the house. While searching for records and documents, officers observed a large amount of cocaine in the basement. The search was temporarily halted until another search warrant covering narcotics was obtained. The officers continued the search after receiving notification that a second search warrant had been issued.

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<sup>1</sup> Defendant was acquitted of two counts of possession of a firearm during the commission of a felony, MCL 750.227b, and felon in possession of a firearm, MCL 750.224f. The jury was unable to reach a verdict on additional charges of possession with intent to deliver 1,000 or more grams of cocaine, MCL 333.7401(2)(a)(i), delivery of 450 or more but less than 1,000 grams of cocaine, and two counts of delivery of 50 or more but less than 450 grams of cocaine, MCL 333.7401(2)(a)(iii). Defendant was subsequently retried and convicted of all four charges.

Police seized 1,233 grams of cocaine, nearly a pound of marijuana, a handgun, documents establishing defendant and his wife resided at the location, \$18,075 in cash and a taser gun. Defendant's sole claim on appeal is that the trial court erred in denying his motion to suppress the evidence seized from 26 Sanford, because the initial search of the residence was not supported by a valid search warrant.

When considering a ruling on a motion to suppress evidence, we review the trial court's findings of fact for clear error, giving deference to the trial court's resolution of factual issues. *People v Bolduc*, 263 Mich App 430, 436; 688 NW2d 316 (2004), lv den 472 Mich 868, cert den \_\_\_ US \_\_\_; 126 S Ct 415; 163 L Ed 2d 317 (2005). "A finding of fact is clearly erroneous if, after a review of the entire record, an appellate court is left with a definite and firm conviction that a mistake has been made." *Id.* We may not substitute our judgment for that of the trial court or make independent findings. *Id.* However, we review de novo the trial court's application of law to its factual findings. *Id.*

The Fourth Amendment of the United States Constitution and Const 1963, art 1, § 11, guarantee the right of persons to be secure against unreasonable searches and seizures. *People v Kazmierczak*, 461 Mich 411, 417; 605 NW2d 667 (2000). A search conducted without a warrant generally qualifies as unreasonable unless both probable cause and circumstances establishing an exception to the warrant requirement exist. *People v Snider*, 239 Mich App 393, 407; 608 NW2d 502 (2000), lv den 463 Mich 855 (2000). Generally, materials seized and observations made during an unconstitutional search may not be introduced into evidence. *People v Hawkins*, 468 Mich 488, 498-499; 668 NW2d 602 (2003).

Defendant maintains police did not have a warrant to enter the premises, entered the premises illegally and obtained a warrant only after finding narcotics on the premises. After the trial, defense counsel obtained a letter from the criminal department supervisor at the Clarkston District Court. The correspondence indicates that the court "was never in receipt" of a search warrant for 26 Sanford. Defendant filed a motion to stay proceedings pending appeal, and to suppress the evidence. At a hearing, defendant argued that the evidence seized from 26 Sanford should be suppressed because there was no record of any search warrant in the Clarkston District Court. The prosecutor argued that warrants are not jurisdictional in that any judge in the State can sign a warrant. The prosecutor noted that no criminal proceeding relating to this matter was ever assigned to the Clarkston District Court, that the preliminary examination was held in the Waterford District Court, and that the warrants could have been filed in the courts in Waterford or Pontiac, given the facts of this case.

The trial record in this matter establishes that Oakland County Sheriff Detective Sergeant Brent Miles of the Narcotics Enforcement Team was the affiant for two search warrants for 26 Sanford. Detective Sergeant Miles testified that he typed the two search warrants, put the probable cause information into an affidavit supporting the warrants, appeared before a judge, and swore to all the facts. Sergeant Miles explained that the first warrant was for records. Detective Sergeant Miles testified that when he received communication from the officers at 26 Sanford that narcotics were found, he advised the officers on the scene to stop the search and wait until he obtained a second warrant for the narcotics. Detective Sergeant Miles testified that a judge signed a second warrant, and he communicated that fact to the officers on the scene.

On this record, we cannot find that the trial court's decision to deny defendant's motion to suppress is clearly erroneous. Although defendant presented evidence that the warrants were not filed in the Clarkston District Court, the mere fact that there is no record of the warrants in that court is not conclusive. The prosecution presented evidence of two facially valid search warrants containing a judge's signature. Three police officers testified regarding the existence of the document search warrant and the later issuance of a second search warrant allowing the seizure of narcotics. Detective Sergeant Miles testified that he authored the affidavits and warrants and obtained a judge's signature on both warrants.

Additionally, implicit in defendant's argument is a claim that the judicial signature on one or both warrants was forged. But apart from conjecture, defendant did not present any evidence challenging the authenticity of the signatures. Defense counsel did not present the warrants to the judge to determine if she actually signed them and did not seek an evidentiary hearing regarding this matter.

Simply put, defendant did not present any evidence that either of the search warrants was invalid or bogus. As the appellant, "[d]efendant may not leave it to this Court to search for a factual basis to sustain or reject his position." *People v Traylor*, 245 Mich App 460, 464; 628 NW2d 120 (2001), lv den 465 Mich 914 (2001). Consequently, we are not left with a definite and firm conviction that a mistake was made.<sup>2</sup>

Affirmed.

/s/ Pat M. Donofrio  
/s/ Richard A. Bandstra  
/s/ Brian K. Zahra

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<sup>2</sup> Defendant suggests that this matter should be revisited because the correspondence from the Clarkston District Court criminal department supervisor is newly discovered. To the contrary, the warrants are dated March 15, 2004. At a December 9, 2004, preliminary examination, defense counsel questioned an officer about the search and the existence of a search warrant. Defendant filed a pretrial motion to suppress the evidence on the basis of an unlawful search on March 29, 2005, and a hearing was held on April 27, 2005. Trial commenced on May 16, 2005. After the conclusion of defendant's trial, defense counsel then went to the Clarkston District Court and inquired about the search warrants. Defendant has not identified any support for a finding that this information was not discoverable before or during trial.